

Opinion issued October 23, 2008



In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00887-CR

HECTOR MANUEL CASTILLO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 83229**

MEMORANDUM OPINION

On February 9, 2000, appellant Hector Manuel Castillo pleaded guilty to the offense of indecency with a child, in accordance with a plea bargain with the State. The trial court deferred adjudication and placed Castillo on community supervision for five years. Castillo did not appeal from this plea. Castillo subsequently failed to meet the terms of his community supervision by failing to meet with his community supervision officer and by failing to register as a sex offender. On March 9, 2000, the State moved to adjudicate Castillo's guilt. After an absence from the jurisdiction, Castillo returned, and the trial court heard the motion to adjudicate on October 11, 2007. Castillo pleaded "true" to the allegations contained in the State's motion. The trial court found Castillo guilty, and assessed punishment at ten years' confinement in the Institutional Division of the Texas Department of Criminal Justice. Castillo filed his notice of appeal on the same day.

In a single issue, Castillo appeals his conviction, asserting that, because he failed to initial all of the admonishments in his original guilty plea, the plea was involuntary. Specifically, Castillo notes that he failed to initial the admonishment that waived his right to have the trial court order a presentence investigation report, and further contends that the trial court did not orally admonish him. We dismiss the appeal for lack of jurisdiction.

Discussion

Castillo's appeal as to the voluntariness of his guilty plea to the original charge is untimely. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (Vernon 2007); *Manuel v. State*, 994 S.W.2d 658, 661–62 (Tex. Crim. App. 1999). A defendant placed on deferred adjudication community supervision may raise issues related to the original plea proceeding only if he appeals at the time the trial court initially imposes deferred adjudication community supervision. *Manuel*, 994 S.W.2d at 661–62; *Guillory v. State*, 99 S.W.3d 735, 738 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd). The Court of Criminal Appeals in *Nix v. State*, 65 S.W.3d 664, 667–68 (Tex. Crim. App. 2001), recognized two exceptions to the general rule: (1) the void judgment exception, and (2) the habeas corpus exception. Castillo's complaint regarding admonishments does not fit within either of these exceptions: he does not contend that the original judgment is void, and Castillo's appeal is not a request for a writ of habeas corpus.

In particular, complaints about the voluntariness of the original guilty plea may be raised in an appeal taken when deferred adjudication is first imposed. *Clark v. State*, 997 S.W.2d 365, 368–69 (Tex. App.—Dallas 1999, no pet.); *Robinson v. State*, 2002 WL 31122764 at *1 (Tex. App.—Houston [1st Dist.] 2002, no pet.). Castillo's ancillary claim that the trial court's

failure to admonish him regarding his waiver of the right to a presentence investigation report evidences a denial of his right to effective assistance of counsel is similarly within the rule. *See Cozzi v. State*, 160 S.W.3d 638, 640 (Tex. App.—Fort Worth 2005, pet. ref'd) (holding claim of ineffective assistance of counsel at time of guilty plea must be raised in appeal from order placing appellant on deferred adjudication community supervision, not after guilt is adjudicated); *Webb v. State*, 20 S.W.3d 834, 836 (Tex. App.—Amarillo 2000, no pet.) (same).

Conclusion

We hold that Castillo's failure to appeal at the proper time precludes us from considering his sole issue. Therefore, we dismiss the appeal for lack of jurisdiction.

Jane Bland
Justice

Panel consists of Justices Jennings, Hanks, and Bland.

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